

**ORDINANCE NO. 2015-22**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING EMPLOYEES GENERAL RETIREMENT SYSTEM, ARTICLE IV, CHAPTER 70 ENTITLED "RETIREMENT AND PENSION" OF THE CODE OF ORDINANCES TO MEET THE INTERNAL REVENUE CODE'S TAX QUALIFICATION REQUIREMENTS FOR GOVERNMENT PENSION PLANS, AND IN PARTICULAR REVISING DIVISION 4. MEMBERSHIP, SECTIONS § 70-203 ENTITLED "RETIREMENT PLANS" BY IMPLEMENTING AN ANNUAL CONTRIBUTION LIMIT TO THE ANNUITY SAVINGS FUND, AND § 70-207 ENTITLED "WAR SERVICE CREDIT" PROVIDING SPECIAL RULES RELATING TO CONTRIBUTIONS, BENEFITS, SERVICE CREDITS, AND TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR PLAN MEMBERS ENGAGED IN QUALIFIED MILITARY SERVICE; DIVISION 5. BENEFITS, § 70-250 ENTITLED "PAYMENTS FOR DEATH INCURRED EITHER BEFORE OR AFTER RETIREMENT" PROVIDING DEATH BENEFITS FOR SURVIVORS OF PLAN MEMBERS IN ENGAGED IN QUALIFIED MILITARY SERVICE; DIVISION 6. ADDITIONAL BENEFITS FOR FIREFIGHTER AND POLICE OFFICER MEMBERS IMPLEMENTING MINIMUM BENEFITS REQUIRED BY CHAPTERS 175 AND 185, FLORIDA STATUTES AND OTHER BENEFITS ALREADY PROVIDED, § 70-257 ENTITLED "WAR SERVICE CREDIT" PROVIDING FOR TREATMENT OF DIFFERENTIAL WAGE PAYMENTS TO FIREFIGHTER OR POLICE OFFICER MEMBERS ENGAGED IN QUALIFIED MILITARY SERVICE AND §70-259.1 ENTITLED "FEDERAL TAX PROVISIONS" PROVIDING FOR ROLL-OVERS OF DISTRIBUTIONS BY NON-SPOUSE BENEFICIARIES; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PENALTIES; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, a qualified government pension plan is entitled to favorable tax treatment, such as tax deferral on distributions, rollovers and tax free earnings, only if the plan complies with the tax requirements of the Internal Revenue Code;

**WHEREAS**, the proposed amendments are necessary to conform to the requirements of the Internal Revenue Code;

**WHEREAS**, the proposed amendments are made pursuant to a review of the plan and favorable determination by the Internal Revenue Service that the plan meets the tax requirements of the Internal Revenue Code up to and including January 31, 2019; and

**WHEREAS**, failure to comply with the tax requirements of the Internal Revenue Code may subject the plan to the risk of disqualification and loss of tax benefits;

**WHEREAS**, this Amendment will not negatively impact the City of Hialeah pension plan financially; and

**WHEREAS**, the proposed Amendment was reported to the Board of Trustees of the Employees General Retirement System at a meeting on April 21, 2015.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 70 entitled "Retirement and Pensions", Article IV. Employees General Retirement System, Division 4, Membership, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Hialeah Code § 70-203 entitled "Retirement plans" and Hialeah Code § 70-207 entitled "War service credit" to read as follows:

Chapter 70

**RETIREMENT AND PENSIONS**

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**ARTICLE IV. EMPLOYEES GENERAL  
RETIREMENT SYSTEM**

**DIVISION 4. MEMBERSHIP**

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**Sec. 70-203. Retirement plans.**

- (a) All members of the retirement system shall contribute seven percent of the member's compensation to the annuity savings fund. Notwithstanding the foregoing, in accordance with Section 415(c)(1) of the Code, the contributions to the annuity savings fund shall not exceed the lesser of \$40,000 (\$52,000 for 2014 and adjusted annually for cost-of-living adjustments under Section 415(d)(1) of the Code) or 100 percent of the member's compensation. For purposes of the annuity savings fund, the definition of "compensation" is the definition provided in Treasury Regulation Section 1.415(c)-2.
- (b) All members enrolled in the plan on January 26, 1970, are eligible for retirement after 20 years of service or the attainment of age 50.
- (c) New members enrolling in the plan on or after January 27, 1970, and prior to January 1, 1974, must have at least 20 years of membership service or must have reached the age of 55 years with a minimum of 15 years of membership service in order to be eligible for normal retirement.

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**Sec. 70-207. War service credit; Qualified Military Service.**

If a member of the retirement service who has been continuously employed for a period of one calendar year or more as a member is called or enlists in the military, naval, marine, air force or other branch of the Armed Service of the United States Government during time of war or other national emergency recognized by the board of trustees, such war service shall be credited to the member as membership service, and the city shall continue to contribute to the pension reserve fund the same amount of money as it had previously been contributing immediately prior to induction into the armed service, provided that such member returns to work for the city within the time specified by the civil service rules and regulations of the city and, further, providing that such member will be permitted, if the member so desires, to pay into his annuity savings fund the same amount the member would have paid had the member not been absent for military service.

Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended, USERRA or Chapters 175 and 185, Florida Statutes as applicable.

For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined in Section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 313(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

**Section 2:** Chapter 70 entitled "Retirement and Pensions", Article IV. Employees General Retirement System, Division 5, Benefits, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Hialeah Code § 70-250 entitled "Payment for death incurred either before or after retirement", to read as follows:

Chapter 70

**RETIREMENT AND PENSIONS**

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**ARTICLE IV. EMPLOYEES GENERAL  
RETIREMENT SYSTEM**

**DIVISION 5. BENEFITS**

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**Sec. 70-250. Payments for death incurred either before or after retirement.**

- (a) If a member dies before retirement, the designated beneficiary, upon written application at the time claim is submitted, shall select one of the following options, provided the member has not reached retirement requirements and elected an option under section 70-243. The option selected under this section shall be irrevocable:
  - (1) Five years of pension benefits as provided for in section 70-238
  - (2) Ten years of pension benefits at one-half of the amount as computed under option (1) in subsection (a)(1) of this section.
- (b) If a retirant dies, the designated beneficiary, upon written application at the time the claim is submitted, shall receive five years of retirement benefits as provided in section 70-238, reduced by such part as the retired member has used in the member's own retirement at the time of his death, or the designated beneficiary may elect to receive one-half of the monthly benefits to which the member is entitled, for double the applicable period of time, provided the retirant had not elected an option under section 70-243. This option shall be irrevocable.
- (c) If the member's designated beneficiary dies, there shall be no further benefits derived from this plan to any survivors of a beneficiary.
- (d) If both a member and the designated beneficiary should die within the continuance period, the unused annuitant portion of the member's contribution to the annuity savings fund shall be returned to the deceased member's estate.

(e) In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant are entitled to any additional benefits (other than accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed and then terminated employment by the city on account of death.

**Section 3:** Chapter 70 entitled "Retirement and Pensions", Article IV. Employees General Retirement System, Division 6, Additional Benefits for Firefighter and Police Officer Members Implementing Minimum Benefits Required by Chapters 175 and 185, Florida Statutes and Other Benefits Already Provided, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Hialeah Code § 70-257 entitled "War service credit" and § 70-259.1 entitled "Federal tax provisions" to read as follows:

Chapter 70

**RETIREMENT AND PENSIONS**

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**ARTICLE IV. EMPLOYEES GENERAL  
RETIREMENT SYSTEM**

**DIVISION 6. ADDITIONAL BENEFITS FOR FIREFIGHTER AND POLICE OFFICER  
MEMBERS IMPLEMENTING MINIMUM BENEFITS REQUIRED BY CHAPTERS 175  
AND 185, FLORIDA STATUTES AND OTHER BENEFITS ALREADY PROVIDED**

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**Sec. 70-257. War service credit; Qualified Military Service.**

In determining service credit of any firefighter member or police officer member, credit for up to five years of the time spent in the military service of the armed forces of the United States shall be added to the member's years of actual service at no cost to the member if:

- (a) The member is in the active employ of the city immediately prior to such service and leaves a position for the purpose of voluntary or involuntary service in the armed forces of the United States.

- (b) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.
- (c) The member returns to the member's employment with the city as a firefighter or police officer within one year from the date of release from such active service.
- (d) Notwithstanding any provisions of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided according to Section 414(u) of the Internal Revenue Code of 1986, as amended, USERRA or F.S. chs. 175 and 185, as applicable.
- (e) For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined in Section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 313(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

\* \* \*

**Sec. 70-259.1. Federal tax provisions.**

- (a) No pension provided hereunder shall be assignable and no part of the corpus or income of the fund shall be used for, or diverted to, purposes other than for the exclusive benefit of members and their beneficiaries, and until those liabilities are satisfied, all city contributions will remain in the fund for the benefit of the members or beneficiaries if the plan is terminated or city contributions cease.
- (b) Upon termination of the plan or on the complete discontinuance of contributions under the plan, each member shall have non-forfeitable, 100% vested rights to benefits accrued to date of the termination or discontinuance to the extent funded at that time.

\* \* \*

- (h) Rollover of distributions. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision herein to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, as provided in Section 401(a)(31) of the Internal Revenue Code. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code. If a non-spouse Beneficiary receives a distribution from the plan, the distribution is not eligible for a 60-day (non-direct) rollover.

**Section 4: Repeal of Ordinances in Conflict.**

All ordinance or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits

**Section 6: Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

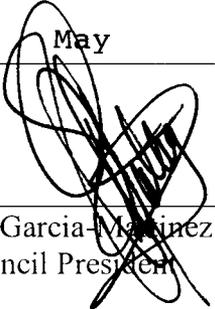
**Section 7: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining phrases, clauses, sentences, paragraphs or section of this ordinance.

**Section 8: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 26 day of May, 2015.

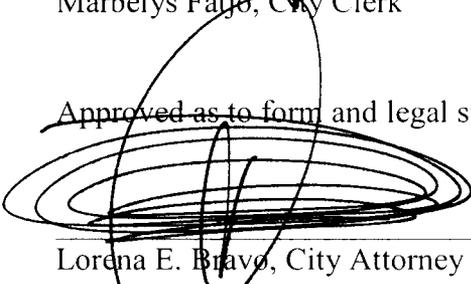
  
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Isis Garcia-Martinez  
Council President

Attest: Approved on this 03 day of June, 2015.

  
\_\_\_\_\_  
Marbelys Fatjo, City Clerk

  
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Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
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Lorena E. Bravo, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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**THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.04  
PRIOR TO FINAL READING.**

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".